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CAPITAL ONE BANK and  
10 CAPITAL ONE SERVICES, INC.

11 UNITED STATES DISTRICT COURT  
12 NORTHERN DISTRICT OF CALIFORNIA  
13  
14

15 DAVID J. LEE, an individual and, On Behalf of  
All Others Similarly Situated,

16 Plaintiffs,

17 v.

18 CAPITAL ONE BANK, CAPITAL ONE  
19 SERVICES, INC. And DOES 1-100, inclusive,

20 Defendants.  
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Case No. C-07-4599 MHP

**CLASS ACTION**

**STIPULATION AND ~~[PROPOSED]~~  
ORDER CONTINUING HEARING  
DATE ON DEFENDANTS' MOTION  
TO DISMISS TO MARCH 3, 2008 AT  
2:00 P.M. AND MODIFYING  
BRIEFING SCHEDULE**

Hon. Marilyn H. Patel

Complaint filed: Sept. 5, 2007

1 Pursuant to Civil Local Rules 6-2 and 7-7(b) Defendants Capital One Bank and Capital  
2 One Services, Inc. ("Defendants") and Plaintiff David Lee hereby stipulate to continue the  
3 hearing date on Defendants' Motion to Dismiss scheduled for January 28, 2008, to March 3, 2008  
4 at 2:00 p.m. and to modify the briefing schedule for the Opposition and Reply briefs.

5 WHEREAS, on December 21, 2007, Defendants filed a Notice of Continuance of  
6 Hearing, moving the hearing on the Motion to Dismiss from January 14, 2008 to January 28,  
7 2008;

8 WHEREAS, due to a miscalculation of the deadlines, Plaintiff failed to file the Opposition  
9 to the Motion to Dismiss by January 7, 2008, as required by the Local Rules, and has not yet filed  
10 the Opposition;

11 WHEREAS, Defendants will suffer prejudice if they are required to file a Reply by  
12 January 14, 2008 (the deadline for a January 28, 2008 hearing) given that Defendants have not yet  
13 received the Opposition from Plaintiff;

14 WHEREAS, the next date on which the parties are available for a hearing on the Motion  
15 to Dismiss (on dates that the Court has availability for a hearing) is March 3, 2008;

16 WHEREAS, the parties agree that to remedy the filing error in a manner fair to both  
17 parties, Plaintiff will file the Opposition to the Motion to Dismiss by January 28, 2008 and  
18 Defendants will file a Reply by February 15, 2008;

19 IT IS HEREBY STIPULATED AND AGREED, subject to the approval and order of the  
20 Court, that the hearing on Defendants' Motion to Dismiss will be held on March 3, 2008 at 2:00  
21 p.m., Plaintiff's Opposition will be due on January 28, 2008, and Defendants' Reply will be due  
22 on February 15, 2008.

1 Dated: January 10, 2008

MORRISON & FOERSTER LLP

2 By: /s/ James R. McGuire  
3 James R. McGuire

4 Attorneys for Defendants  
5 CAPITAL ONE BANK and  
CAPITAL ONE SERVICES, INC.

6 Dated: January 10, 2008

HALE & ASSOCIATES

7 By: /s/ [INSERT]  
8 Matthew S. Hale

9 Attorneys for Plaintiff  
10 DAVID J. LEE

11 I, James R. McGuire, am the ECF user whose ID and password are being used to file this  
12 Stipulation To Extend Time To Respond To Complaint. I hereby attest that Matthew S. Hale has  
13 concurred in this filing.

14  
15  
16 **ORDER**

17 PURSUANT TO THE PARTIES' STIPULATION, IT IS SO ORDERED

18 Dated: January 11, 2008

19 By:  Patel